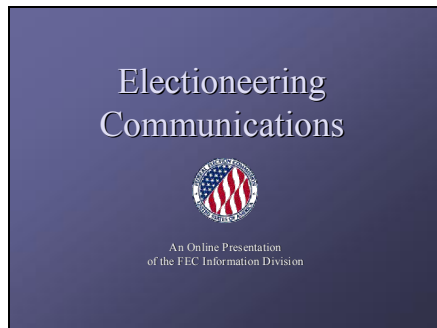


## Electioneering Communications Online Presentation

**Slide  
1**



Electioneering Communications, an online presentation of the FEC Information Division

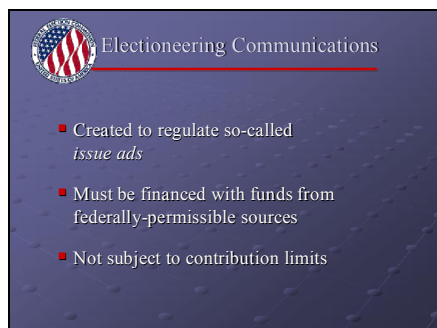
**Slide  
2**



This presentation focuses on the rules for electioneering communications. We will first define the term electioneering communication. Then, we'll identify who may, and may not, make or finance electioneering communications and also review the associated disclosure requirements. Should you have any questions after viewing this presentation, please contact the FEC's Information Division for assistance.

Let's start by defining the term electioneering communication.

**Slide  
3**

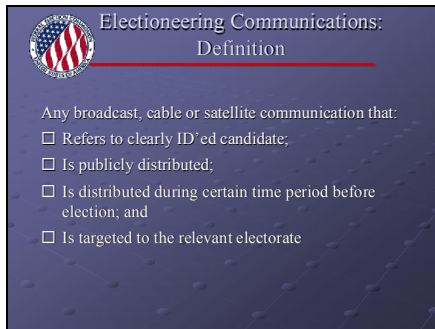


Introduced as part of the Bipartisan Campaign Reform Act of 2002, the electioneering communications provisions were created to regulate so-called issue ads. Some argued that because these ads focused on issues, and because the ads didn't contain express advocacy (they didn't explicitly say to vote for or against the candidate), they fell outside the FEC's regulatory purview. Others argued that because the ads depicted a federal candidate and were aired right before that candidate's election, the purpose of the ads was to influence elections. These ads often were financed by corporations, unions and other federally-impermissible sources and went largely undisclosed.

In general, the electioneering communications rules require that the qualifying ads be financed with funds from sources permissible under federal campaign finance law. But, neither the funds raised nor those spent on electioneering communications are subject to the law's contribution limits.

So, which ads qualify as electioneering communications?

Slide  
4

The slide features a dark blue background with a subtle pattern of white stars. In the top left corner is a circular seal with an American flag design and the text "ELECTIONEERING COMMUNICATIONS" and "2010-2012". The title "Electioneering Communications: Definition" is centered at the top in white. Below the title, the text "Any broadcast, cable or satellite communication that:" is followed by a list of four criteria, each preceded by an unchecked checkbox.

**Electioneering Communications: Definition**

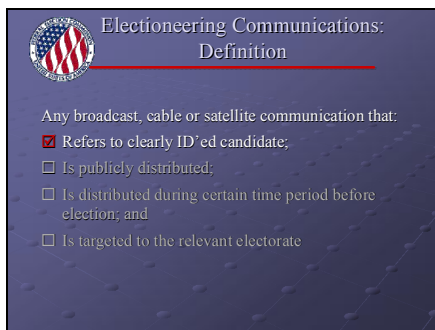
Any broadcast, cable or satellite communication that:

- ☐ Refers to clearly ID'ed candidate;
- ☐ Is publicly distributed;
- ☐ Is distributed during certain time period before election; and
- ☐ Is targeted to the relevant electorate

To qualify as an electioneering communication, the ad must be broadcast – this includes radio, cable or satellite television – and it must refer to a clearly identified candidate; be publicly distributed shortly before the election for the office the candidate is seeking; and be targeted to individuals who can vote for that candidate.

Let's break down each part of this definition.

Slide  
5

The slide is identical to slide 4, but the first checkbox, "Refers to clearly ID'ed candidate;", is now checked with a red 'x'.

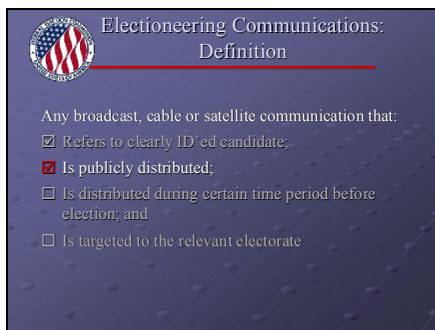
**Electioneering Communications: Definition**

Any broadcast, cable or satellite communication that:

- ☒ Refers to clearly ID'ed candidate;
- ☐ Is publicly distributed;
- ☐ Is distributed during certain time period before election; and
- ☐ Is targeted to the relevant electorate

A communication refers to a clearly identified candidate if it contains the candidate's name, nickname or image or, if it makes an unambiguous reference to the person or their status as a candidate – such as “the Democratic candidate for Senate.” Its important to note that expressly advocating the election or defeat of the candidate is not necessary to meet this condition.

Slide  
6

The slide is identical to slide 5, but the second checkbox, "Is publicly distributed;", is now checked with a red 'x'.

**Electioneering Communications: Definition**

Any broadcast, cable or satellite communication that:

- ☒ Refers to clearly ID'ed candidate;
- ☒ Is publicly distributed;
- ☐ Is distributed during certain time period before election; and
- ☐ Is targeted to the relevant electorate

Next, let's look at what the term “publicly distributed” means.

Slide  
7

The slide is identical to slide 6, but the third checkbox, "Is distributed during certain time period before election; and", is now checked with a red 'x'.

**Electioneering Communications: Definition**


Any broadcast, cable or satellite communication that:

- ☒ Refers to clearly ID'ed candidate;
- ☒ Is publicly distributed;
- ☒ Is distributed during certain time period before election; and
- ☐ Is targeted to the relevant electorate

A communication is considered publicly distributed if it is disseminated through the facilities of a television station, radio station, cable television system or satellite system.

A recent change to the rules removed “for a fee” from the definition of publicly distributed. As a result, these rules are not limited to paid programming and would apply to public service announcements (PSAs), commercials, infomercials, as well as paid advertising.

**Slide  
8**




**Electioneering Communications:  
Definition**

Any broadcast, cable or satellite communication that:

- ☒ Refers to clearly ID'ed candidate;
- ☒ Is publicly distributed;
- ☒ Is distributed during certain time period before election; and
- ☐ Is targeted to the relevant electorate

The timing of an ad is a key factor in determining whether it qualifies as an electioneering communication. The controlling time period depends upon the type of election---primary or general.

**Slide  
9**



**Electioneering Communications:  
Definition**


- Proximity to Election:
  - Transmitted within 60 days prior to a general election or 30 days prior to a primary election
  - Includes elections where candidate is unopposed
  - Includes caucuses/conventions that nominate candidates

[www.fec.gov/info/charts\\_ec\\_dates.shtml](http://www.fec.gov/info/charts_ec_dates.shtml)

Electioneering communications are distributed within 60 days prior to a general election or 30 days prior to a primary election for the federal office sought by the candidate (including a runoff or special election), even if the candidate is unopposed. A primary election includes any caucus or convention of a political party that has the authority to nominate a candidate to federal office.

The FEC publishes a state-by-state list of the applicable 30- and 60-day periods that trigger the electioneering communications requirements on our website. [www.fec.gov/info/charts\\_ec\\_dates.shtml](http://www.fec.gov/info/charts_ec_dates.shtml)

**Slide  
10**




**Electioneering Communications:  
Definition**

Any broadcast, cable or satellite communication that:

- ☒ Refers to clearly ID'ed candidate;
- ☒ Is publicly distributed;
- ☒ Is distributed during certain time period before election; and
- ☒ Is targeted to the relevant electorate

Finally, the communication must be targeted to the relevant electorate.

**Slide  
11**



**Electioneering Communications:  
Definition**

- ▶ Targeted to Relevant Electorate:
  - ▶ Communication can be received by ≥50,000 people in Congressional District (for House) or in State (for Senate)
  - ▶ FCC maintains database determining who can receive a communication

<http://gulfoss2.fec.gov/ecd>


- ▶ Not applicable to Presidential candidates

The communication is said to target the relevant electorate if it can be received by 50,000 or more people in the district (in the case of a House candidate) or in the state (for a Senate candidate) that the clearly identified candidate is seeking to represent.

On its website, the Federal Communications Commission provides the information necessary to determine whether a communication can reach 50,000 people. <http://gulfoss2.fec.gov/ecd>

Since the “relevant electorate” for Presidential candidates includes the entire country, the targeting requirement does not apply to messages that mention Presidential or Vice Presidential candidates. Please note, however, that a separate 50,000-person threshold does apply with respect to Presidential primaries, caucuses and nominating conventions.

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**Electioneering Communications:  
Definition**

Presidential/Vice Presidential Primaries:  
Ad considered *publicly distributed* if received  
by ≥ 50,000 people for –

- **Primary/Caucus:** in the state w/in 30 days  
of election
- **Nominating Convention:** anywhere in US  
during period of 30 days prior through last day  
of convention

During the nominating process, a communication that refers to a Presidential or Vice Presidential candidate must reach 50,000 or more people in order to be considered “publicly distributed.” Specifically, the communication is considered publicly distributed if it can be received by 50,000 or more people in a state where a primary election or caucus is being held within 30 days; or anywhere in the US during the period between 30 days prior to the national nominating convention and the conclusion of that convention. There are no similar requirements with respect to the general election.

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**Not an Electioneering  
Communication**

- Communication disseminated through means other  
than TV, satellite or radio
- News story, commentary or editorial
- Communication that qualifies as an “Expenditure”  
or “Independent Expenditure”
- Candidate debate or forum
- Communication by state or local candidate that  
does not promote, support, attack or oppose a  
federal candidate

The statute and regulations also include examples of communications that are exempt from the definition of electioneering communication.

A communication that is disseminated through a medium other than radio or television would not meet the electioneering communications definition. Examples include newspaper ads, direct mail pieces, or communications on the Internet.


Also exempt are news stories, commentaries or editorial broadcasts by radio, a television station or a cable or satellite system. However, if the facility is owned or controlled by a political party, political committee or candidate, the communication must satisfy the exemption for news stories found at 11 CFR 100.132.

Since the purpose of these rules is to capture disclosure of communications that often went unreported in previous cycles, the definition exempts any communication that qualifies as an expenditure or independent expenditure, because those payments would already be reported to the FEC. In essence, this means that the electioneering communications rules do not apply to federal committees already registered and reporting activity to the FEC.

Also exempted from the electioneering communication requirements are candidate debates or forums, or a communication that solely promotes a debate or forum. The promotional communication must be made by or on behalf of the entity sponsoring the debate or forum.

Finally, a communication paid for by a state or local candidate that does not promote, support, attack or oppose a federal candidate is exempt from the electioneering communications rules.

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### Objectives

- Define the term electioneering communication
- Identify who may do electioneering communications
- Review disclosure requirements

So far, we've defined what is, and is not, considered an electioneering communication. Now, let's focus on who can, and cannot, make electioneering communications.

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### Application to Corporations and Unions

- Prohibited from making or financing electioneering communications
- **New!** Exemption for 501(c)(3) organizations removed – now subject to general EC provisions
- Lobbying ads may be affected
- SSF communications treated as reportable expenditure rather than EC


As noted earlier, electioneering communications must be financed using funds from sources permissible under federal campaign finance law. Corporations, labor unions and other incorporated membership organizations cannot finance electioneering communications, directly or through another person.

A recent change to the rules removed an exemption for 501(c)(3) organizations, so they are now subject to the electioneering communications restrictions.

Corporations and unions should bear in mind that clearly identifying a candidate in a communication meant to be a lobbying ad could trigger the electioneering communication ban, if the other elements of the definition are satisfied.

The PAC of a corporation/union/trade association (also known as a separate segregated fund or SSF) may pay for such communications. However, it would be treated as a reportable expenditure on the SSF's FEC report (or as a contribution, if coordinated) and not subject to electioneering communication disclosure rules.

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### Application to Corporations and Unions


#### Exemption for Qualified Nonprofit Corporations (QNC)

- 501(c)(4) corporation that is ideological in nature, accepts no prohibited funds and has no business income
- QNC must certify that it is eligible for the exemption when disclosing electioneering communications

Corporations that are "qualified nonprofit corporations" (QNC) are exempt from the corporate prohibition and may make electioneering communications. To qualify as a QNC, the organization must be described in 26 U.S.C. 501(c)(4), must be ideological in nature and cannot receive any business income. Please note that while QNCs may make electioneering communications and independent expenditures, they still may not make contributions to federal political committees.

If a QNC makes electioneering communications that aggregate in excess of \$10,000 in a calendar year, it must certify that it is eligible for the QNC exemption, and report its activity to the FEC.

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Application to  
“527” Organizations


- Corporate prohibition does not apply to incorporated state candidate committees
- Unincorporated, unregistered 527s may make electioneering communications
- No corporate or labor funding
- Disclosure required

“527” organizations take their name from the section of the Internal Revenue Code that describes them. Basically, “527s” are political organizations. Some are registered with the FEC as political committees but, in the context of these rules, we are focusing on those “527s” that are not already registered with the FEC.

As we just discussed, corporations are generally prohibited from making electioneering communications. However, incorporated state candidate committees registered as “527s” are exempt from the corporate prohibition and may make electioneering communications provided that the committee is incorporated for liability purposes only. Other unincorporated, unregistered “527s” may also make electioneering communications.

For any “527” organization making an electioneering communication, corporate or labor funds may not be used to finance the ad and the entity is subject to the applicable disclosure requirements.

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Application to  
Individuals and Partnerships

- May make electioneering communications
- No corporate or labor funding
- Must be able to demonstrate that no prohibited funds were used
- Must file disclosure reports

Individuals, partnerships and limited liability companies (LLCs) taxed as partnerships may make electioneering communications, but cannot use any corporate or labor funds to pay for them. In fact, they must be able to demonstrate through a reasonable accounting procedure that no prohibited funds were used to pay for the electioneering communication.

In addition, individuals and partnerships are subject to the applicable disclosure requirements.

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Objectives

- Define the term electioneering communication
- Identify who may do electioneering communications
- Review disclosure requirements

Now, let’s briefly discuss the requirements for disclosing electioneering communications.



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### Electioneering Communications: Disclosure Requirements

- Electioneering communications aggregating \$10,000 or more must be disclosed to FEC within 24 hours of the "disclosure date"
- Disclosed using FEC Form 9
- Disclaimer required

FEC Form 9 – [www.fec.gov/pdf/forms/fecfrm9.pdf](http://www.fec.gov/pdf/forms/fecfrm9.pdf)  
Brochure on disclaimers – [www.fec.gov/pages/brochures/brochures.shtml](http://www.fec.gov/pages/brochures/brochures.shtml)

Persons making electioneering communications that aggregate more than \$10,000 in the calendar year must report the cost of the communication within 24 hours of the disclosure date. The disclosure date is the first date on which an electioneering communication is publicly distributed, provided the person making the electioneering communication has made disbursements, or has executed contracts to make disbursements, for the direct costs of producing or airing one or more electioneering communications aggregating in excess of \$10,000.

Subsequently, each time the direct costs of producing or airing the electioneering communications aggregate in excess of \$10,000, an additional disclosure report is due within 24 hours of the electioneering communication's public distribution.


Electioneering communications are disclosed on FEC Form 9 and must be filed with the FEC. Note that electronic filers must file these notices electronically. Paper filers may submit the notice by mail, but are encouraged to file by fax or e-mail to ensure compliance with the 24-hour filing deadline.

[www.fec.gov/pdf/forms/fecfrm9.pdf](http://www.fec.gov/pdf/forms/fecfrm9.pdf)

It also important to note that a disclaimer notice is required on all electioneering communications – indicating who paid for the communication and whether or not it is authorized by the candidate. For more information on disclaimer requirements, please refer to the brochure, *Special Notices on Political Ads and Solicitations*, on the FEC website.

[www.fec.gov/pages/brochures/brochures.shtml](http://www.fec.gov/pages/brochures/brochures.shtml)

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### FEC Resources

Our web site: [www.fec.gov](http://www.fec.gov)  
Educational Outreach:  
[www.fec.gov/info/outreach.shtml](http://www.fec.gov/info/outreach.shtml)  
Toll free information line:  
(800) 424-9530  
Email your questions to:  
[info@fec.gov](mailto:info@fec.gov)

The Federal Election Commission is committed to helping individuals comply with the federal campaign finance laws. We encourage you to make use of our other resources:

- We provide a wealth of compliance information on our web site;  
[www.fec.gov](http://www.fec.gov)
- We conduct conferences throughout the country, host roundtable workshops in Washington, DC, and visit state capitals to meet with local candidates, party and PAC representatives;  
[www.fec.gov/info/outreach.shtml](http://www.fec.gov/info/outreach.shtml)
- We maintain a toll-free information line you can call for help without having to identify yourself (800) 424-9530; and
- We respond within 10 days to questions sent by e-mail.  
[info@fec.gov](mailto:info@fec.gov)

We look forward to serving you.